

Senate Bill 978

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits electric company from including in its rates cost of electric generation resource or energy storage resource that is capable of generating electricity or storing electricity for not less than five years and has generating or storage capacity of 50 megawatts or more unless electric company must acquire resource to maintain reliability of electrical company's electrical system.

Requires electric company to use competitive bidding process when procuring electricity from electric generation resource or energy storage resource that is capable of generating electricity or storing electricity for not less than five years and has generating or storage capacity of 50 megawatts.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to utilities; creating new provisions; amending ORS 59.025, 757.600, 757.646 and 757.676; and
3 prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 757.600 is amended to read:

6 757.600. As used in ORS 757.600 to 757.689, unless the context requires otherwise:

7 (1) "Aggregate" means combining retail electricity consumers into a buying group for the pur-
8 chase of electricity and related services.

9 (2) "Ancillary services" means services necessary or incidental to the transmission and delivery
10 of electricity from generating facilities to retail electricity consumers, including but not limited to
11 scheduling, load shaping, reactive power, voltage control and energy balancing services.

12 (3) "Commission" means the Public Utility Commission.

13 (4) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an
14 electric cooperative.

15 (5) "Default supplier" means an electricity service supplier or electric company that has a legal
16 obligation to provide electricity services to a consumer, as determined by the commission.

17 (6) "Direct access" means the ability of a retail electricity consumer to purchase electricity and
18 certain ancillary services, as determined by the commission for an electric company or the govern-
19 ing body of a consumer-owned utility, directly from an entity other than the distribution utility.

20 (7) "Direct service industrial consumer" means an end user of electricity that obtains electricity
21 directly from the transmission grid and not through a distribution utility.

22 (8) "Distribution" means the delivery of electricity to retail electricity consumers through a
23 distribution system consisting of local area power poles, transformers, conductors, meters, sub-
24 stations and other equipment.

25 (9) "Distribution utility" means an electric utility that owns and operates a distribution system
26 connecting the transmission grid to the retail electricity consumer.

27 (10) "Economic utility investment" means all electric company investments, including plants and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 equipment and contractual or other legal obligations, properly dedicated to generation or conser-
 2 vation, that were prudent at the time the obligations were assumed but the full benefits of which
 3 are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition
 4 credits. "Economic utility investment" does not include costs or expenses disallowed by the com-
 5 mission in a prudence review or other proceeding, to the extent of such disallowance, and does not
 6 include fines or penalties authorized and imposed under state or federal law.

7 (11) "Electric company" means an entity engaged in the business of distributing electricity to
 8 retail electricity consumers in this state, but does not include a consumer-owned utility.

9 (12) "Electric cooperative" means an electric cooperative corporation organized under ORS
 10 chapter 62 or under the laws of another state if the service territory of the electric cooperative
 11 includes a portion of this state.

12 (13) "Electric utility" means an electric company or consumer-owned utility that is engaged in
 13 the business of distributing electricity to retail electricity consumers in this state.

14 (14) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity,
 15 measured in kilowatts, or both.

16 (15) "Electricity services" means electricity distribution, transmission, generation or
 17 generation-related services.

18 (16) "Electricity service supplier" means a person or entity that offers to sell electricity services
 19 available pursuant to direct access to more than one retail electricity consumer. "Electricity ser-
 20 vice supplier" does not include an electric utility selling electricity to retail electricity consumers
 21 in its own service territory.

22 (17) "Governing body" means the board of directors or the commissioners of an electric coop-
 23 erative or people's utility district, or the council or board of a city with respect to a municipal
 24 electric utility.

25 (18) "Load" means the amount of electricity delivered to or required by a retail electricity
 26 consumer at a specific point of delivery.

27 (19) "Low-income weatherization" means repairs, weatherization and installation of energy effi-
 28 cient appliances and fixtures for low-income residences for the purpose of enhancing energy effi-
 29 ciency.

30 **(20) "Major resource" means an electric generation resource or an energy storage re-**
 31 **source that an electric company acquires, or for which an electric company contracts, to**
 32 **generate or store electricity for not less than five years and that:**

33 **(a) If a single resource, has a generating or storage capacity of 50 megawatts or more;**
 34 **or**

35 **(b) If multiple resources:**

36 **(A) Has an aggregate generating or storage capacity of 50 megawatts or more; and**

37 **(B) Meets criteria for aggregating generating or storage capacity as prescribed by the**
 38 **commission by rule or order, provided that the burden of proof is on an electric utility to**
 39 **demonstrate that multiple resources should not be aggregated in any proceeding determining**
 40 **whether multiple resources are a major resource.**

41 [(20)] **(21)** "Municipal electric utility" means an electric distribution utility owned and operated
 42 by or on behalf of a city.

43 [(21)] **(22)** "New renewable energy resource" means a renewable energy resource project, or a
 44 new addition to an existing renewable energy resource project, or the electricity produced by the
 45 project, that is not in operation on July 23, 1999. "New renewable energy resource" does not include

1 any portion of a renewable energy resource project under contract to the Bonneville Power Ad-
2 ministration on or before July 23, 1999.

3 [(22)] (23) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

4 [(23)] (24) "People's utility district" has the meaning given that term in ORS 261.010.

5 [(24)] (25) "Portfolio access" means the ability of a retail electricity consumer to choose from
6 a set of product and pricing options for electricity determined by the governing board of a
7 consumer-owned utility and may include product and pricing options offered by the utility or by an
8 electricity service supplier.

9 [(25)] (26) "Power generation company" means a company engaged in the production and sale
10 of electricity to wholesale customers, including but not limited to independent power producers, af-
11 filiated generation companies, municipal and state authorities, provided the company is not regu-
12 lated by the commission.

13 [(26)] (27) "Qualifying expenditures" means those expenditures for energy conservation measures
14 that have a simple payback period of not less than one year and not more than 10 years, and
15 expenditures for the above-market costs of new renewable energy resources, provided that the State
16 Department of Energy by rule may establish a limit on the maximum above-market cost for
17 renewable energy that is allowed as a credit.

18 [(27)] (28) "Renewable energy resources" means:

19 (a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or by low-
20 emission nontoxic biomass based on solid organic fuels from wood, forest and field residues.

21 (b) Dedicated energy crops available on a renewable basis.

22 (c) Landfill gas and digester gas.

23 (d) Hydroelectric facilities located outside protected areas as defined by federal law in effect
24 on July 23, 1999.

25 [(28)] (29) "Residential electricity consumer" means an electricity consumer who resides at a
26 dwelling primarily used for residential purposes. "Residential electricity consumer" does not include
27 retail electricity consumers in a dwelling typically used for residency periods of less than 30 days,
28 including hotels, motels, camps, lodges and clubs. As used in this subsection, "dwelling" includes but
29 is not limited to single family dwellings, separately metered apartments, adult foster homes, manu-
30 factured dwellings, recreational vehicles and floating homes.

31 [(29)] (30) "Retail electricity consumer" means the end user of electricity for specific purposes
32 such as heating, lighting or operating equipment, and includes all end users of electricity served
33 through the distribution system of an electric utility on or after July 23, 1999, whether or not each
34 end user purchases the electricity from the electric utility.

35 [(30)] (31) "Site" means a single contiguous area of land containing buildings or other structures
36 that are separated by not more than 1,000 feet, or buildings and related structures that are inter-
37 connected by facilities owned by a single retail electricity consumer and that are served through a
38 single electric meter.

39 [(31)] (32) "Transition charge" means a charge or fee that recovers all or a portion of an une-
40 conomic utility investment.

41 [(32)] (33) "Transition credit" means a credit that returns to consumers all or a portion of the
42 benefits from an economic utility investment.

43 [(33)] (34) "Transmission facility" means the plant and equipment used to transmit electricity in
44 interstate commerce.

45 [(34)] (35) "Undue market power" means the unfair or improper exercise of influence to increase

1 or decrease the availability or price of a service or product in a manner inconsistent with compet-
 2 itive markets.

3 [(35)] **(36)** “Uneconomic utility investment” means all electric company investments, including
 4 plants and equipment and contractual or other legal obligations, properly dedicated to generation,
 5 conservation and workforce commitments, that were prudent at the time the obligations were as-
 6 sumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to
 7 757.667, absent transition charges. “Uneconomic utility investment” does not include costs or ex-
 8 penses disallowed by the commission in a prudence review or other proceeding, to the extent of such
 9 disallowance, and does not include fines or penalties as authorized by state or federal law.

10 **SECTION 2.** ORS 757.646 is amended to read:

11 757.646. (1) The duties, functions and powers of the Public Utility Commission [*shall*] include
 12 developing policies to eliminate barriers to the development of a competitive retail **and wholesale**
 13 market structure[. *The policies shall*] **for electricity. Policies developed pursuant to this section**
 14 **must** be designed to mitigate the vertical and horizontal **retail and wholesale** market power of
 15 incumbent electric companies, prohibit preferential treatment, or the appearance of [*such*] **prefer-**
 16 **ential** treatment, of generation or market affiliates and determine [*the*] **which** electricity services
 17 **are** likely to be competitive. The commission may require an electric company acting as an elec-
 18 tricity service supplier [*do so*] **to act as an electricity service supplier** through an affiliate.

19 (2) The commission shall establish by rule a code of conduct for electric companies and [*their*]
 20 **electric company** affiliates to protect **retail electricity consumers** against **wholesale and retail**
 21 market abuses and anticompetitive practices. The code shall, at a minimum:

22 (a) Require an electric company and [*any*] **an affiliate of the electric company** that shares the
 23 same name and logo **as the electric company** to disclose to all consumers the relationship between
 24 the company and **the** affiliate and to clarify that the affiliate is not the same as the electric com-
 25 pany and that in order to receive service from the **electric** company a consumer does not have to
 26 purchase the services of the affiliate;

27 (b) Prohibit preferential access by an electric company affiliate to confidential consumer infor-
 28 mation;

29 (c) Prohibit cross-subsidization between competitive operations and regulated operations, in-
 30 cluding the use of electric company personnel and other resources;

31 (d) Prohibit joint marketing activities and exclusive referral arrangements between an electric
 32 company and [*its*] affiliates **of the electric company**;

33 (e) Provide the commission with all necessary access to books and records;

34 (f) Require electric companies to make regular compliance filings; and

35 (g) Require fair treatment of all competitors by a distribution utility.

36 **(3) The commission shall establish by rule competitive bidding requirements to protect**
 37 **retail electricity consumers against wholesale and retail market abuses and anticompetitive**
 38 **practices and to ensure the diverse ownership of resources that generate electricity. The**
 39 **rules shall, at a minimum:**

40 (a) **Prohibit an electric company from including in its rates the cost of a major resource**
 41 **unless the electric company must acquire the major resource to maintain the reliability of**
 42 **the electrical company’s electrical system and that reliability cannot be maintained by pro-**
 43 **curring electricity from a major resource that is not owned by the electric company, by in-**
 44 **creasing the capacity of a major resource that is owned by the electric company or through**
 45 **an unusual below-market opportunity, as identified by the commission by rule or order;**

1 **(b) Require an electric company to use a competitive bidding process when procuring**
 2 **electricity from a major resource to be included in its rates; and**

3 **(c) Allow, through wholesale power purchase or sales agreements or tolling agreements,**
 4 **for the transfer of ownership of renewable energy certificates established under ORS**
 5 **469A.130 to an electric company without the transfer of ownership of the major resource**
 6 **associated with the renewable energy certificates to the electric company.**

7 [(3)] (4) An electric company shall provide the commission access to all books and records nec-
 8 essary for the commission to monitor the electric company and [*its affiliate relationships.*] **the af-**
 9 **filiates of the electric company.** The commission shall require an electric company biannually to
 10 file a report detailing compliance with this subsection.

11 **SECTION 3.** ORS 757.676 is amended to read:

12 757.676. The governing body of a consumer-owned utility is authorized to determine whether and
 13 under what terms and conditions it will offer its retail electricity consumers direct access, portfolio
 14 access or other forms of access to electric service suppliers. In making such determination, the
 15 governing body of a consumer-owned utility shall consider such factors as it deems appropriate. A
 16 consumer-owned utility shall have sole authority to determine:

17 (1) The quality and nature of electric service, including but not limited to different product and
 18 pricing options, which shall be made available to its retail electricity consumers.

19 (2) The extent to which products and services will be unbundled and the rates, tariffs, terms and
 20 conditions on which they may be offered.

21 (3) Whether one or more pilot programs for direct access, portfolio access or other forms of
 22 access to alternative suppliers will be offered.

23 (4) Notwithstanding ORS 757.600 (10) and [(35)] **(36)**, what constitutes an economic or uneco-
 24 nomic utility investment, the value of such investments and, in the case of uneconomic utility in-
 25 vestments, the manner and means of mitigating such investments.

26 (5) Whether and on what basis a transition charge will be adopted, assessed and collected from
 27 a retail electricity consumer located within the utility's service territory, including but not limited
 28 to a nonbypassable distribution charge, the amount and period of recovery for the charges, the al-
 29 location of the charges among retail electricity consumers located within the utility's service terri-
 30 tory and the method of collecting such charges including but not limited to whether to impose a
 31 nonbypassable distribution charge.

32 (6) The manner of collecting stranded distribution charges, systems benefit charges, franchise
 33 fees, taxes and payments made in lieu of taxes from retail electricity consumers located within the
 34 utility's service territory for electric power transactions using transmission facilities, whether or
 35 not such transactions use distribution facilities. The governing body may assign charges on the basis
 36 of usage, demand or any combination or method it finds appropriate. Charges need not be assigned
 37 to specific facilities.

38 (7) The collection from retail electricity consumers located within the utility's service territory
 39 through rates, fees or charges, including the imposition of a nonbypassable distribution charge, in
 40 amounts sufficient to recover 100 percent of stranded costs imposed by, or incurred pursuant to the
 41 purchase of cost-based electric power from, the Bonneville Power Administration. Such stranded cost
 42 charges may include the difference in cost associated with purchasing electric power from the
 43 Bonneville Power Administration and the cost of purchasing a like and similar amount of electric
 44 power at market prices.

45 (8) The establishment of technical capability requirements, financial responsibility requirements

1 and other protections for retail electricity consumers located within the utility's service territory
2 and the consumer-owned utility in dealings with electric service suppliers.

3 (9) Access to or use of the utility's transmission facilities or distribution system by retail elec-
4 tricity consumers or electric service suppliers.

5 (10) The utility's qualification standards for energy service suppliers in addition to any certi-
6 fication standards established by the Public Utility Commission, provided that the qualification
7 standards are uniformly applied to electricity service providers in a nondiscriminatory manner.

8 **SECTION 4.** ORS 59.025 is amended to read:

9 59.025. The following securities are exempt from ORS 59.049 and 59.055:

10 (1)(a) A security issued or guaranteed by the United States or a state, or by a political subdivi-
11 sion, agency or other instrumentality of the United States or a state.

12 (b) Any other security offered in connection with or as part of a security described in paragraph
13 (a) of this subsection, if the security cannot be severed and sold separately from the security in
14 paragraph (a) of this subsection.

15 (2) A security issued or guaranteed by a foreign government with which the United States is
16 at the time of the sale maintaining diplomatic relations, or by a state, province or political subdivi-
17 sion of the foreign government that has the power of taxation or assessment, if the foreign gov-
18 ernment, state, province or political subdivision recognizes the security as a valid obligation.

19 (3) A security that represents an interest in or a direct obligation of, or is guaranteed by, a
20 national bank, a federal savings and loan association, a federal credit union, a federal land bank or
21 joint stock land bank or a national farm loan association.

22 (4) Any of the following securities:

23 (a) A security that, at the time the security is issued, is listed or approved for listing on the
24 New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific
25 Stock Exchange or any other exchange that the Director of the Department of Consumer and Busi-
26 ness Services recognizes by rule;

27 (b) A security that the NASDAQ Stock Market, NASDAQ Options Market or NASDAQ OMX
28 Futures Exchange has designated or approved for designation at the time the security was issued;

29 (c) Any other security issued by a person or entity that issues a security listed or designated
30 under paragraph (a) or (b) of this subsection, if the other security is of senior or substantially equal
31 rank to the listed or designated security;

32 (d) A security issuable under rights or warrants listed or approved under paragraph (a), (b) or
33 (c) of this subsection; or

34 (e) A warrant or right to purchase or subscribe to any security described in paragraph (a), (b),
35 (c) or (d) of this subsection.

36 (5) A security that maintains a rating that the director approves in a recognized securities
37 manual.

38 (6) A security that represents an interest in or a direct obligation of, and that has been or will
39 be issued by, a bank, trust company, savings and loan association or credit union and that is subject
40 to the examination, supervision and control of a regulatory agency of this state.

41 (7) Commercial paper issued, given or acquired in a bona fide way in the ordinary course of le-
42 gitimate business, trade or commerce, if the commercial paper is not made the subject of a public
43 offering.

44 (8) A security, the issuance of which the Public Utility Commission supervises, regulates or
45 controls, if the Public Utility Commission supervises, regulates or controls the person or entity that

1 issues the security.

2 (9) Stock or membership certificates that an agricultural cooperative corporation or irrigation
3 association issues, if the agricultural cooperative corporation or irrigation association issues the
4 stock or membership certificate as evidence of membership in the cooperative or association, as a
5 patronage dividend or as evidence of a member's or a patron's respective interests in reserves or
6 patronage dividends. This exemption does not apply to a cooperative or association that expects to
7 engage in or is engaged in producing, processing or marketing forest products.

8 (10) Stock or membership certificates that a fishing cooperative corporation issues to members
9 of the fishing cooperative corporation either for the purpose of showing membership or for the
10 purpose of showing the members' respective interests in reserves or patronage dividends. For pur-
11 poses of this subsection, a fishing cooperative corporation is an association of persons engaged
12 commercially in harvesting, marketing or processing products of aquatic life from fresh and salt
13 water, that is formed or operated under ORS chapter 62 with the purpose of commercially harvest-
14 ing, marketing or processing such products or engaging in group bargaining with respect to the sale
15 of such products.

16 (11) Stock or membership certificates issued by an association of consumers that is formed or
17 operated under ORS chapter 62 with the purpose of providing groceries to the association's mem-
18 bers, if the association issues the stock or certificates to members either for the purpose of showing
19 membership in the association or for the purpose of showing the members' respective interests in
20 patronage dividends or reserves. For purposes of the exemption under this subsection:

21 (a) The price of stock or a membership certificate may not exceed \$300.

22 (b) The benefits must be limited to discounts on purchases or patronage dividends, or any com-
23 bination of discounts and dividends.

24 (c) The association may issue only one stock or membership certificate to an individual.

25 (12) Subject to conditions that the director adopts by rule, stock or membership certificates that
26 a renewable energy cooperative corporation issues to members of the cooperative corporation, if the
27 cooperative corporation issues the stock or certificates to members either to show membership in
28 the cooperative corporation or to show the members' respective interests in or entitlement to assets,
29 reserves or dividends. For the purpose of this subsection, a renewable energy cooperative corpo-
30 ration is an association of persons that is organized as a cooperative corporation under ORS chapter
31 62 with the purpose of developing and operating facilities to generate electricity from renewable
32 energy resources, as defined in ORS 757.600 [(27)(a), (c) and (d)] **(28)(a), (c) and (d)**, or from a type
33 of energy listed in ORS 469A.025 (1)(c).

34 (13) Any security issued in connection with an employee stock purchase, savings, pension, profit
35 sharing or similar employee benefit plan, provided that:

36 (a) The plan meets the requirements for qualification under section 401 of the Internal Revenue
37 Code of 1986; and

38 (b) The terms of the plan are fair, just and equitable to employees under rules of the director.

39 (14) Any security issued by a person that is:

40 (a) Organized and operated exclusively for a religious, educational, benevolent, fraternal, chari-
41 table or reformatory purpose and not for pecuniary profit;

42 (b) Organized or constituted so that the person's net earnings do not inure to the benefit of any
43 person, private stockholder, or individual; and

44 (c) Designated by rule of the director.

45 (15) Any other security the director exempts by rule.

1 **SECTION 5.** The amendments to ORS 757.646 by section 2 of this 2017 Act, and rules
2 adopted pursuant to ORS 757.646, as amended by section 2 of this 2017 Act, apply to the ac-
3 quisition of major resources occurring on or after the operative date specified in section 6
4 of this 2017 Act.

5 **SECTION 6.** (1) The amendments to ORS 59.025, 757.600, 757.646 and 757.676 by sections
6 1 to 4 of this 2017 Act become operative on January 1, 2018.

7 (2) The Public Utility Commission may take any action before the operative date specified
8 in subsection (1) of this section that is necessary to enable the commission to exercise, on
9 and after the operative date specified in subsection (1) of this section, all the duties, powers
10 and functions conferred on the commission by the amendments to ORS 59.025, 757.600,
11 757.646 and 757.676 by sections 1 to 4 of this 2017 Act.

12 **SECTION 7.** This 2017 Act takes effect on the 91st day after the date on which the 2017
13 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

14